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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,738	09/19/2005	David Bowran	038867/286192	7230
826 7590 04/29/2009 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000				
EXAMINER KRUSE, DAVID H				
ART UNIT 1638		PAPER NUMBER		
MAIL DATE 04/29/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/520,738

Applicant(s)

BOWMAN ET AL.

Examiner

David H. Kruse

Art Unit

1638

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-27, 58 and 62-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 71-75 is/are allowed.
- 6) ☒ Claim(s) 22-27, 58 and 62-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 2/11/2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR § 1.114, including the fee set forth in 37 CFR § 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR § 1.114, and the fee set forth in 37 CFR § 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR § 1.114. Applicant's submission filed on 11 February 2009 has been entered.
2. Applicants have obviated the rejection of record under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-27, 58 and 62-70 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Ponziak *et al*, U.S. Pat. App. Pub. US 2004/0237134 A1, which claims benefit of U.S. Provisional Application 60/311,282, filed 9 August 2001. This rejection is repeated for the reason of record as set forth in the last Office action mailed 28 August 2008. Applicant's arguments filed 11 February 2009 have been fully considered but they are not persuasive.

Applicants argue that U.S. Provisional Application No. 60/311,282, filed August 9, 2001, does not disclose the nucleic acid and/or amino acid sequence of any wheat AHAS. Applicants argue that U.S. Patent Publication No. 2004/0237134 is the patent application publication of U.S. Application No. 10/486,605, which is the U.S. National Stage of International Application No. PCT/CA02/01051, filed July 10, 2002. Applicants argue that the instant application is the U.S. National Stage of International Application No. PCT/IB2003/004645, filed July 9, 2003, and which claims the benefit of U.S. Provisional Application No. 60/394,991, filed July 10, 2002. Applicants argue that given that U.S. Provisional Application No. 60/311,282 fails to disclose the nucleic acid sequence of a polynucleotide that differs from instant SEQ ID NO: 3 of the instant application by one nucleotide and further given that International Application PCT/CA02/01051 (for which U.S. Application No. 10/486,605 is its U.S. National Stage) was not filed before July 10, 2002, the Examiner has failed to make a *prima facie* case of obviousness with respect to claims 22-27, 58, and 62-70 based on the teachings of Pozniak *et al* (page 8 of the Remarks). These arguments are not found to be persuasive. Applicants are claiming derivative and descendants of a wheat plant, not an isolated nucleic acid. International Application PCT/CA02/01051 (for which U.S. Application No. 10/486,605 is its U.S. National Stage) was filed after November 29, 2000, designates the US, was published in English and claims priority to U.S. Provisional Patent Application 60/311,282 filed 9 August 2001. Hence, under the provisions of U.S.C. § 102(e) Ponzak *et al* enjoys the priority date of 9 August 2001.

Conclusion

5. Claims 71-75 are allowed.
6. Claims 22-27, 58 and 62-70 remain rejected.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Kruse, Ph.D. whose telephone number is (571) 272-0799. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached at (571) 272-0975. The central FAX number for official correspondence is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (571) 272-1600.

/David H Kruse/
Primary Examiner, Art Unit 1638
24 April 2009